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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/638,835

08/14/2000

Stephen F. Weiss

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04/02/2003

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EXAMINER

BRIGGS, WILLIAM R

ART UNIT

PAPER NUMBER

3722

DATE MAILED: 04/02/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/638,835

Applicant(s)

WEISS, STEPHEN F.

Examiner

William Briggs

Art Unit

3722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerber.

In Gerber, a power tool has a "rigid attachment portion" 82, 86, 94, 92 that is adapted to be secured to the front end portion of a power tool in which a "helical edge" or "spiral saw" cutting tool is rotatably mounted. The front end of the "rigid attachment portion" allows moving contact with the surface of a workpiece and "controls the depth of cut" of the tool. A "dust exit member" is provided for connection to a vacuum device to draw debris from the attachment portion. While the devices of Gerber is apparently not disclosed in combination with the particular "spiral saw bit" or the "slotted opening" adjustment, one possessing ordinary skill in the art would be expected to recognize that the use of various known cutting bits are useable with the power tools of Gerber and the slotted adjustment means of the instant device constitutes obvious design variants of similar means in the devices of Gerber that allows selective axial adjustment of the distance that the tool extends beyond the end of the attachment portion. Note also that a "slightly tapered" vacuum hose connection is common in vacuum hose connections and the use thereof for the instant vacuum attachment would not be unobvious as a

design choice. Further, no criticality is ascribed to the relative dimensions of the "dust exit member" and the "first attachment portion" and such constitutes an obvious design variant of the relative dimensions of the comparable parts illustrated in Gerber.

### ***Response to Arguments***

Applicant's arguments have been considered by the Examiner but are not persuasive. Applicant argues that his claimed device is distinguished from the tool of Gerber as in Applicant's invention, "...it is important that the forward edge of the attachment portion which contacts the work surface have (sic., has ) an interior diameter which is significantly greater than the diameter of the spiral saw, i.e. that there is a substantial space between the spiral saw and the forward edge of the attachment portion." It is noted that in the device of Gerber, the interior diameter of the closed sleeve 86 must, to be operable as described in Gerber's description, have a diameter which is "greater" than the tool diameter to create a "space" between the tool 46 outside diameter and the diameter of the opening defined by plate 84. Thus, the "close-fitting" construction of Gerber's sleeve opening functions also to admit cut material, including any "dust" created in the cutting operation into a collection space upon which a vacuum is applied to remove cutting material. It is believed that one possessing ordinary skill in the art would recognize that the operation of the vacuum collection device in Gerber to collect debris created by a cutting tool is completely consistent with the operation of Applicant's device to collect debris created by a cutting tool. Absent any defined relative dimensions in Applicant's claim 1, the interior diameter of the closed sleeve 86 may be

considered to have a diameter which is "significantly greater" to create a "substantial space" than the diameter of the tool 46. It is noted also that the tool 46 of Gerber is shown as a spiral or helical cutting bit as illustrated in figures 2 and 4, as is common in the art of cutting tools.

### **CONCLUSION**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to William Briggs who may be reached at (703) 308-1739 during his normal duty hours of 7:30 a.m. to 6:00 p.m., Tuesday through Friday. Messages may be left with the Technology Center 3720 receptionist who may be reached Monday through Friday between the hours of 8:30 a.m. to 5:00 p.m. at (703)

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308-1148. In order to reduce pendency and avoid potential delays, Technology Center 3720 is encouraging FAXing of responses to Office Actions directly into the Technology Center 3720 at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Technology Center 3720 will be promptly forwarded to the examiner.



**WILLIAM BRIGGS**  
**PRIMARY PATENT EXAMINER**  
**ART UNIT 3722**